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Our File: 33956-0049 DJH:lc

IN THE UNITED STATES PATENT AND TRADEMARKS OFFICE

In The Matter of Patent Application:

Applicant

Howard Kaplan (deceased) et al.

Serial No.

10/070.503

Intern. Filing Date :

September 7, 2000

Title

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FRAGMENTS AND METHODS FOR PRODUCING SAME

Examiner

Cynthia M. Kratz

BY COURIER

To:

U.S. Patent and Trademark Office

2011 South Clark Place

Customer Window, Mail Stop PCT Crystal Plaza Two, Lobby, Room 1B03

Arlington, Virginia 22202

U.S.A.

PETITION TO ACCEPT DECLARATION UNDER 37 CFR 1.497, 1.42 and 1.47

Dear Sirs:

Applicant hereby petitions the Commissioner to accept the enclosed Declaration of the above-identified patent application.

Please deduct the petition fee of \$130.00 from our Deposit Account No. 13-2400, pursuant to 37 C.F.R. 1.17(h).

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Background

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On March 7, 2002, the applicant filed a transmittal letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371 with the basic national fee. In response to a Notification of Missing Requirements mailed June 12, 2002, to satisfy the requirement that an oath or declaration of the inventors be furnished, the applicant filed a Declaration on August 12, 2002 that was signed by inventors Joycelyn Entwistle, Jamshid Tanha, Saran Narang, Michael Dan and identifying Carole Grad as a legal representative for the deceased inventor Howard Kaplan.

On December 24, 2002, a Decision on the applicant's submission was mailed indicating that the declaration was unacceptable because it was not signed by Carole Grad as legal representative for the deceased inventor Howard Kaplan and did not clearly state that country of citizenship, former residency and mailing address of both the deceased inventor and the legal representative, as required for compliance with 37 C.F.R. 1.497.

On March 24, 2003, the applicant filed a renewed request, accompanied by handwritten alteration to the originally filed declaration and statement that the legal representative refused to sign the declaration.

On August 8, 2003, the PCT Legal Office issued a Decision that the declaration was defective because it had been amended to include the requested information.

Discussion

The attorney for the PCT Legal Office advised the applicant that, pursuant to 37 C.F.R. 1.42, 1.47 and 1.497, in the case of the death of an inventor, and where the legal representative of the inventor refuses to sign declaration on behalf of the deceased inventor, a Petition under 37 C.F.R. 1.47 is proper. The last know address of the legal representative must be given. The Petition under 37 C.F.R. 1.47(a) must be accompanied by (1) the fee under 37 C.F.R. 1.17(h), (2) factual proof that the non signing joint inventors

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refuses to execute the application or cannot be reached after diligent effort; (3) a statement

of the last known address of the non signing inventors; and (4) an oath or declaration by

each available joint inventor on his or her own behalf and on behalf of the non signing joint

inventors.

In response, the applicant encloses herein a Declaration executed by inventors Joycelyn

Entwistle, Jamshid Tanha, Saran Narang and Michael Dan. The last known address of the

legal representative of Carole Grade, legal representative for deceased inventor Howard

Kaplan, is given.

We also enclose (1) the fee under 37 C.F.R. 1.17(h) in the amount of \$130.00; (2) factual

proof that the non signing joint inventor's legal representative refuses to execute the

application, by way of an executed statement from that legal representative refusing to

executing the declaration; (3) as set out in the Declaration, the last know address of the

non signing inventor's legal representative is: 47 Jessica Gardens, Thornhill, Ontario, L4J

3G1, Canada; and (4) enclosed is the oath or declaration by each available joint inventor

on his or her own behalf and on behalf of the non signing joint inventors.

The requirements set out by the attorney advisor of the PCT Legal Office having been met,

favour reconsideration is respectfully requested. If anything further is required, please

contact the undersigned.

Respectfully Submitted,

Rv.

Dávid J. Heller. Reg. No. 43.384

Place:

Toronto, Ontario, Canada

Date:

October 7, 2003